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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Annual Assessment of the Status of	)	CS Docket No. 96-133
Competition in the Market for the	)	
Delivery of Video Programming	)	

REPLY COMMENTS OF LIFETIME TELEVISION

LIFETIME TELEVISION

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Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming	)	CS Docket No. 96-133

REPLY COMMENTS OF LIFETIME TELEVISION

Lifetime Television ("Lifetime") hereby submits these reply comments in the above-referenced FCC review of the status of competition in the market for video programming. Lifetime strongly supports the efforts of the Commission to promote competition in multichannel video distribution as contemplated by the Telecommunications Act of 1996, yet urges the Commission to recognize the significant market and regulatory impediments that independent programmers continue to face. Accordingly, Lifetime urges the Commission to reject once again the call for the unfounded and unnecessary application of the program access rules to non-vertically integrated programmers.

I. LIFETIME WELCOMES THE FCC'S PROMOTION OF INCREASED COMPETITION IN A VIDEO MARKETPLACE THAT CONTINUES TO POSE SUBSTANTIAL CHALLENGES TO INDEPENDENT PROGRAMMERS

Lifetime is an independent programmer that has been able to obtain strong audience growth by delivering innovative entertainment and informational programming over a wide variety of programming distribution outlets.[1] Lifetime has been successful in large part

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[1] Lifetime is not vertically integrated with either a cable system operator or telephone (continued...)

because it provides programming that appeals particularly to women -- an audience segment that Lifetime believes is underserved by other programmers. Reaching over 64 million households, Lifetime ranks fifth in prime time household ratings and sixth in total day ratings among satellite-delivered program services.[2] Indeed, Lifetime is pleased to report to the Commission that it will soon augment its dedication to this audience with the launch of a new programming block that will serve as the foundation for a second full-time programming network, targeting women 18-34 years old with innovative, original programming.

As an independent programmer without the financial support or assured distribution of a vertically integrated programmer, Lifetime has relied on advertising revenues for approximately 75% of its revenue stream. Accordingly, Lifetime has always been committed to maximizing its viewing audience by all available means and has long made its programming available to home satellite dish distributors, wireless cable operators, and direct broadcast satellite distributors. Lifetime has also been seeking carriage on local exchange company (LEC) video distribution systems as they enter the video distribution marketplace.

Yet the challenge of obtaining and maintaining widespread distribution remains great even for established independent program services -- and all the greater for newly launched services such as Lifetime's new program offering for younger women. Existing regulatory requirements continue to squeeze channel capacity of cable systems and limit the channels

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[1](...continued)
company video distributor. Lifetime is a joint venture of The Hearst Corporation, Disney/ABC International Television, Inc. and related entities.

[2] A.C. Nielsen Cable Network Audience Composition Report (2nd Quarter 1996).

available to independent programmers. The must-carry and retransmission consent rules have, in tandem, often worked to disfavor, if not displace, cable program services in the battle for program carriage. The pending proposals to provide a regulatory boost for leased access programming would only result in a further squeeze on channel capacity. Additionally, a cable rate regulation regime that does not reward investment in existing program services, coupled with the opportunity for cable operators to carry services (such as home shopping networks) that generate additional revenue, has exerted tremendous pressure to dislocate advertiser-supported program services. In many cases, highly rated and well-established programming services have been bumped from the broadly distributed tiers that are critical to their success, and in other cases such services have been dropped altogether.[3]

Lifetime therefore strongly supports a regulatory environment that fosters increased competition and, in turn, increased outlets and channel capacity, in the multichannel video distribution marketplace. Lifetime has consistently urged the Commission to promote competition rather than adopt regulations that unfairly constrain market entry or limit the

[3] A recent front-page story in USA Today named Lifetime and ten other established programming services that are vulnerable to being deleted in order for TCI to live up to its commitment to launch the Fox News Channel to 10 million subscribers (and to receive up to $13 per subscriber and an option to buy a 20% stake in the service, according to the article). Beth Benton and David Lieberman, *Cable crunch may KO Lifetime, E!*, USA Today, Aug. 15, 1996, at 1A; David Lieberman, *Newcomers may crowd out older channels*, USA Today, Aug. 15, 1996 at 1B. Notwithstanding the fact that Lifetime is the only programming service wholly dedicated to serving the needs and interests of women and, according to Nielsen, was the highest rated basic cable network during the week of July 29-August 4, 1996, Lifetime has been threatened with deletion within the next month from TCI systems representing hundreds of thousands of households.

programming alternatives available to consumers. Programmers clearly benefit from the presence of additional viable outlets for their program services. This results not only in increased demand for and investment in existing programming, but also creates a market for new program services. Robust competition in both the video distribution and programming markets ultimately benefits the viewing public by providing competitively priced, diversified, high quality informational and entertainment programming.

Accordingly, Lifetime urges the Commission to continue to promote competition in the video distribution marketplace -- but not (as the commenters addressed below would have it) on the backs of independent programmers, like Lifetime, that are already struggling to maximize distribution in a competitive programming marketplace.

II. THE COMMISSION'S REPORT SHOULD STATE EXPRESSLY THAT THERE EXISTS NO BASIS FOR EXTENSION OF THE PROGRAM ACCESS RULES TO NON-VERTICALLY INTEGRATED PROGRAMMERS

Lifetime opposes those commenters urging the Commission to recommend extension of the program access rules to non-vertically integrated programmers.[4] The intent and justification for the program access rules -- both as originally enacted and as extended to common carriers in the Telecommunications Act of 1996 -- make clear that these rules would lose their analytical foundation if they were extended to non-vertically integrated programmers that have significant market incentives to make their programming as widely

[4] *See, e.g.*, Comments of Wireless Cable Ass'n., CS Docket No. 96-133, at 22 (filed Jul. 19, 1996); Comments of BellSouth, CS Docket No. 96-133, at 4 (filed Jul. 19, 1996).

available as possible. Furthermore, any extension of the program access rules would needlessly burden already-disadvantaged independent programmers.

Congress established the program access rules in the 1992 Cable Act to promote competition to cable operators by restricting certain conduct among cable operators and satellite programmers vertically integrated with cable operators.[5] The recent extension of the program access rules in the 1996 Act provides only further and more recent evidence of the clear intent of Congress to limit application of the program access rules to the circumstance where the programmer and programming distributor are vertically integrated.[6] Congress thus has not sought to regulate the program marketplace *per se*, but rather to limit the ability of vertically integrated video distributors which it believed to have the incentive and ability to favor their affiliated cable or telco distributors over nonaffiliated distributors and thereby handicap competition in multichannel video distribution.[7]

Not just the legislative intent but also the fundamental rationale of the program access rules is simply inapposite for non-vertically integrated programmers. The interest in checking the leverage and incentives of MSO- or telco-owned programmers is not operative when applied to non-vertically integrated programmers that derive no benefit by favoring one distribution technology over another. Such independent programmers have neither the

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[5] *See* Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 at § 2, 106 Stat. 1460 (hereinafter "1992 Cable Act").

[6] Telecommunications Act of 1996, Pub. L. No. 104-104 at § 302(h), 110 Stat. 56 (amending Section 628 of the Communications Act of 1934).

[7] *See* 1992 Cable Act at § 2(a)(5).

incentive nor the ability to impede competition in the distribution marketplace. Rather, the primary incentive of an independent programmer -- particularly an advertiser-supported service such as Lifetime -- is to market its services aggressively to all technologies in order to obtain maximum distribution. Lifetime's stake in the emergence of vigorous competition in the distribution marketplace is to promote it, not impede it.

Ignoring the fundamental premise of the program access rules, however, certain alternative multichannel video programming distributors urge the Commission to recommend the extension of the rules to cover all programmers.[8] These commenters would thus convert a policy strictly designed to limit cable market power into a full and sweeping regulation of the wholesale pricing and distribution of all video programming. Because non-vertically integrated programmers lack any incentive to restrict the distribution outlets for their product, there is no need for this unprecedented intrusion into the wholesale program marketplace. Moreover, commenters urging extension of the rules do not even attempt to address the greater harm -- both to the viability of independent program services and their ability to attract new investment -- that may arise as a result.

By urging the Commission to extend the program access rules to non-vertically integrated programmers, these commenters seek not to eliminate but rather to gain for themselves the benefit of the negotiating leverage they attribute to cable operators.[9] To the extent that cable market power skews the program marketplace, however, public policy

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8 *See, e.g.*, Comments of Wireless Cable Ass'n. at 20-33.

9 *Id.*

should seek to promote competition and thereby erode that market power -- not unfairly penalize its victims.

III. CONCLUSION

Lifetime urges the Commission to aggressively foster the development of competition in the video distribution marketplace. In doing so, however, Lifetime strongly urges the Commission to refrain from recommending that the program access rules be extended to non-vertically integrated programmers, and, further, to make an affirmative finding that there is no basis for any proceeding considering extension of the scope of the rules in such a manner.

Respectfully submitted,

LIFETIME TELEVISION

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